

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: July 16, 2019

* * * * *	*	
LISA SPENCER,	*	Unpublished
Petitioner,	*	
	*	No. 17-1384V
	*	
v.	*	Special Master Gowen
	*	
SECRETARY OF HEALTH	*	
AND HUMAN SERVICES,	*	Influenza (“flu”); Shoulder Injury
	*	Related to Vaccine Administration
Respondent.	*	(“SIRVA”); Stipulation for Award
* * * * *		

Jeffrey S. Pop, Jeffrey S. Pop & Associates, Beverly Hills, CA for petitioner.

Linda S. Renzi, Department of Justice, Washington, D.C., for respondent.

DECISION FOR STIPULATION¹

On September 29, 2017, Lisa Spencer (“petitioner”), filed a petition for compensation under the National Vaccine Injury Program.² Petition at Preamble. Petitioner received an influenza (“flu”) vaccine on August 27, 2015. *Id.* at 2; Stipulation at ¶ 2 (ECF No. 37). Petitioner alleged that as a result of receiving the flu vaccination, she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”). *Id.* at Preamble; Stipulation at ¶ 4.

On July 15, 2019, respondent filed a stipulation providing that a decision should be entered awarding compensation to petitioner. Stipulation at ¶ 7. Respondent denies that petitioner sustained a SIRVA Table injury and denies that her current condition is a sequelae of a vaccine-related injury caused by the flu vaccine. *Id.* at ¶ 6. Maintaining their respective

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). “An objecting party must provide the court with a proposed redacted version of the decision.” *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes.** *Id.*

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding compensation to petitioner according to the terms of the stipulation attached hereto as Appendix A. *Id.* at ¶ 7.

The stipulation awards:

- 1) **A lump sum of \$18,000.00 the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).**
- 2) **A lump sum of \$3,141.11 representing compensation for satisfaction of the State of New York Medicaid Lien in the form of a check jointly payable to petitioner and:**

**New York State Department of Health
P.O. Box 415874
Boston, Massachusetts 02241-5874**

Petitioner agrees to endorse this payment to New York State Department of Health.

I adopt the parties' stipulation attached hereto, and award compensation in the amount and on the terms set forth therein. The Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Entry of judgment is expediated by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

LISA SPENCER,)	
)	
Petitioner,)	No. 17-1384V
)	Special Master Gowen
v.)	
)	ECF
SECRETARY OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Lisa Spencer, petitioner, filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).
2. Petitioner received a flu vaccination on or about August 27, 2015.
3. The vaccine was administered within the United States.
4. Petitioner alleges that she sustained a SIRVA within the time period set forth in the Table. She further alleges that she experienced the residual effects of this condition for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.
6. Respondent denies that petitioner sustained a SIRVA Table injury; and denies that her current condition is a sequelae of a vaccine-related injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

(a) A lump sum of \$18,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a), except as set forth in paragraph 8.b, and

(b) A lump sum of \$3,141.11 representing compensation for satisfaction of the State of New York Medicaid Lien in the form of a check jointly payable to petitioner and:

New York State Department of Health
P.O. Box 415874
Boston, Massachusetts 02241-5874

Petitioner agrees to endorse this payment to New York State Department of Health.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 of this Stipulation, and any amount awarded pursuant to paragraph 9 of this Stipulation, will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors and/or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on or about August 27, 2015, as alleged by petitioner in a petition for vaccine compensation filed on or about September 29, 2017, in the United States Court of Federal Claims as petition No. 17-1384.

14. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's alleged SIRVA, or any other injury or her current condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

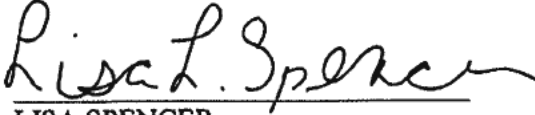
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Respectfully submitted,

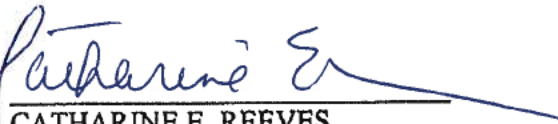
PETITIONER:


LISA SPENCER

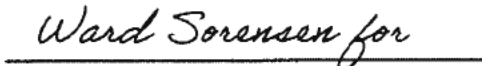
**ATTORNEY OF RECORD FOR
PETITIONER:**


JEFFREY S. POP, Esq.
9150 Wilshire Blvd., Suite 241
Beverly Hills, California 90212-3429
(310) 273-5462


**AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:**


CATHARINE E. REEVES
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

**AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:**


NARAYAN NAIR, M.D.
Director, Division of Injury
Compensation Programs
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 08N146B
Rockville, MD 20857

**ATTORNEY OF RECORD FOR
RESPONDENT:**


LINDA S. RENZI
Senior Trial Counsel
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
Tel: (202) 616-4133

Dated: 15 July 2019